TEXAS DEPARTMENT OF INSURANCE
Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)
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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name
Sentrix Pharmacy and Discount, L.L.C.

Respondent Name
American Zurich Insurance Company

MFDR Tracking Number
M4-17-3266-01

Carrier's Austin Representative
Box Number 19

MFDR Date Received
July 10, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "28 TAC §134.530 clearly states that preauthorization is only required for any compound that contains a drug identified with a status of 'N' in the current edition of the ODG Workers' Compensation Drug Formulary. In the case of the claim(s) as issue, all of the ingredients are identified with a 'Y' in the August 2016 Drug Formulary. As demonstrated by the enclosed documentation, all ingredients in the compounded medications subject to the claims at issue are included on the closed formulary."

Amount in Dispute: $1,244.50

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Requestor did not request and receive preauthorization for this investigational or experimental compound formulation."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 25, 2016	Pharmacy Services – Compound	$1,244.50	$1,244.50

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
3. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
4. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.

5. Texas Insurance Code, Chapter 4201 provides requirements related to utilization review.
6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
   - 39 – Services denied at the time authorization/pre-certification was requested.

Issues

1. Did American Zurich Insurance Company (Zurich) raise a new defense pursuant to 28 Texas Administrative Code §133.307?
2. Is the Zurich's reason for denial of payment supported?
3. Is Sentrix Pharmacy and Discount, L.L.C. (Sentrix) entitled to reimbursement of the disputed services?

Findings

1. In its position statement, Flahive, Ogden & Latson argued on behalf of Zurich, "In its retrospective Adverse Determination of September 13, 2017 … the Carrier denied the subject services on the basis of lack of medical necessity."

   28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

   Review of the submitted documentation does not find documentation to support that Zurich presented a medical necessity denial to Sentirx in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The division concludes that this defense presented in Flahive, Ogden & Latson's position statement shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Sentrix is seeking reimbursement of $1,244.50 for a compound dispensed on August 25, 2016. Zurich denied the disputed service with claim adjustment reason code 39 – "SERVICES DENIED AT THE TIME AUTHORIZATION/PRE-CERTIFICATION WAS REQUESTED." 28 Texas Administrative Code §134.530(b)(1) states that preauthorization is **only** required for:

   (A) drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary,* and any updates;
   (B) any compound that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary,* and any updates; and
   (C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

   Provision §134.530(b)(1)(A) preauthorization requirement is not discussed in this dispute because it was not asserted by either party and is not applicable to the compound in question.

   While not asserted by Zurich, Sentrix was not required to seek preauthorization pursuant to §134.530(b)(1)(B) because none of the compounded ingredients have a status of "N" in the current edition of the ODG/Appendix A.

   Flahive, Ogden & Latson, on behalf of Zurich, argued that "for topical application, this compound is considered *investigational* under the ODG."

   The determination of a service's investigational or experimental nature is not subject to the *Official Disability Guidelines* (ODG). Instead, it is determined on a case by case basis as a utilization review pursuant to Texas Insurance Code §4201.002. Further, Texas Insurance Code §4201.002(13) states that utilization review, in relevant part, "includes a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services."

The division found **no evidence** that Zurich engaged in a prospective or retrospective utilization review (UR) as required by Texas Insurance Code §4201.002 in order to establish that the following compound is investigational or experimental in nature:

Compound Cream in Dispute	
Ingredient	Amount
Salt Stable LS Base	85.2 gm
Baclofen 4%	4.8 gm
Amantadine 8%	9.6 gm
Amitriptyline 2%	2.4 gm
Gabapentin 5%	6.0 gm
Ketoprofen 10%	12.0 gm

Because Zurich failed to perform UR on the above listed compound, the requirement for preauthorization under §134.530(b)(1)(C) **is not triggered** in this case. Zurich's preauthorization denial is therefore not supported.

Absent any evidence that Zurich presented other defenses to Sentrix before medical fee dispute resolution that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division finds that the compounds in question are eligible for reimbursement.

3. 28 Texas Administrative Code §134.503 applies to the services in dispute and states, in pertinent part:

    (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
    (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
        (A) Generic drugs: ((AWP per unit) x (number of units) x 1.25) + $4.00 dispensing fee per prescription = reimbursement amount;
        (B) Brand name drugs: ((AWP per unit) x (number of units) x 1.09) + $4.00 dispensing fee per prescription = reimbursement amount;
        (C) When compounding, a single compounding fee of $15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
    (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
        (A) health care provider; or
        (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compounds in dispute were billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Reimbursement is calculated as follows:

Ingredient	NDC & Type	Price/Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Salt Stable LS Base	00395602157 Brand Name	$3.36	85.0 gm	$311.30	$286.24	$286.24
Baclofen 4%	38779038808 Generic	$35.63	4.8 gm	$213.78	$170.99	$170.99
Amantadine 8%	38779041109 Generic	$24.225	9.6 gm	$290.70	$232.60	$232.60
Amitriptyline 2%	58597800308 Generic	$19.15	2.4 gm	$57.45	$45.92	$45.92

Gabapentin 5%	58597801407 Generic	$62.84	6.0 gm	$471.30	$377.08	$377.08
Ketoprofen 10%	58597801707 Generic	$10.97	12.0 gm	$164.55	$131.67	$131.67
NA	NA	NA	NA	$15.00 fee	$0	$0
					Total	$1,244.50

The total allowable reimbursement for the compound in dispute is $1,244.50. This amount is recommended.

Conclusion

For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is $1,244.50.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor $1,244.50, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Laurie Garnes	December 21, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012**.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.